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REMARKS

This application has been carefully reviewed in view of the current final office action, and Applicants hereby request reconsideration in view of the following amendments and arguments.

1. Applicant Reiterates All Prior Arguments

The Examiner's attention is directed to the prior response, since Applicant stands by all arguments presented in that response.

2. The Rejection of claims 1, 2, 6 and 8

Regarding the rejection to claims 1, 2, 6 and 8 under 35 U.S.C. §103(a) as obvious, reconsideration is respectfully requested for the following reasons. Applicants have amended claim 1 to specify that the entertainment content is a song and to further specify that the sample comprises less than the complete song, and that the sample is received without encryption and without security codes and without restriction on redistribution. The Examiner has, in effect, considered and rejected the concept that the definition of a sample being less than a complete song is adequate to overcome the reference, but Applicant believes the reasoning behind this is in error.

First of all, it is noted that the specification supports this amendment in numerous places (e.g., page 6, line 27 through page 7, line 21), and deals extensively with how to sample a song. It is further noted that the Examiner has clearly already pondered whether or not such an amendment would overcome the art. Thus, entry of the amendment is believed proper and is requested.

It is further noted that the Examiner has relied upon a dictionary definition of the term "sample" to support his position. However, the Examiner's chosen definition is in clear conflict with the narrower use of the term throughout the specification. In fact, large portions of the specification clearly discuss how to select a portion of a song to sample, thus making it clear that a sample is less than a complete song. In view of the clear meaning of sample from the specification, reconsideration of the Examiner's position in view of the claim amendment is requested.

Additionally, the Office Action states on page 4 that Fritsch teaches distributing an electronic song sample via a web site, and maintains that distribution of the sample by email would be obvious in view of Kang. However, it is important to note that the kang reference teaches distributing the entire song as an email attachment, not distribution of a sample. The Kang reference clearly only contemplates full distribution of the complete copy of the song by the users.

If one refers to paragraph 29, page 2 of Kang (the passage cited by the Examiner), it is important to note that only those who pay for the contents are rewarded in Kang. Payment of such rewards is managed by security codes forming part of the song being distributed. As previously noted, no such security codes or other restrictions on distribution are used in embodiments of the present invention. The Office Action correctly points out that the claims do not preclude this however. In order to assure that this is the interpretation of the claims, all claims of the application have been amended to include language specifying that the sample comprised less than the complete song, and the sample was received without encryption and without security codes and without restriction on redistribution.

The undersigned finds no suggestion in the Fritch reference of any use of email to provide for distribution of samples. Samples are available in Fritch in order for an online customer to "pre-listen" to a potential purchase, but the user must first find the sample by navigating to the appropriate site and then apparently manually download or stream the sample and then download or otherwise purchase the full content. There is no suggestion of distribution of samples by email to entice a recipient to purchase the content.

The kang reference also falls short of the meeting the limitations of claim 1 as amended. While kang does disclose transmitting complete songs via email, there is no evidence that kang in any way contemplates distribution of anything other than a full copy of the content. As best understood by the undersigned, users are encouraged by payment to redistribute the content. Users are apparently discouraged against using the content without payment by virtue of being asked to pay each time play of the content is attempted. This is in stark contrast to the free distribution of samples as contemplated by the current invention. Since only a sample is distributed, there is no significant danger in permitting

full access and use of the sample, and the full song can be protected in any other desired way without inhibiting distribution of the sample in any way.

3. There is no suggestion in the art to combine Fritsch and kang / making the combination destroys the function of or changes the principle of operation of one or the other

In certain embodiments of Applicants' invention, users can freely distribute the sample which can be freely played without restriction in hopes that those users that like the content will use the associated link to purchase the content. If Fritsch is combined with kang as suggested, such that samples that are available in Fritsch are distributed rather than the full content, Applicants are unable to determine how the hierarchical payment mechanism of kang would function. In fact, it is believed that such a function would be useless or destroyed along with destruction of one of kang's primary objectives - allowing a user to redistribute the full content and be compensated for it. (See page 1, paragraph 10). It is not an objective or result of Applicant's invention to get users to redistribute the full content. It is further submitted that there is no suggestion in the art of the desirability of making the proposed combination. The Examiner is directed to MPEP 2143.01, particularly the sections entitled: "THE PRIOR ART MUST SUGGEST THE DESIRABILITY OF THE CLAIMED INVENTION" and "THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE" and "THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE". Accordingly, reconsideration and allowance of claims 1, 2, 6 and 8 as amended is respectfully requested.

4. The Rejection of Claims 7 and 9

Regarding the rejection of claims 7 and 9 (and claims dependent on claim 9), the arguments of above are equally applicable. Moreover, it is noted that claims 7 and 9 call for the sample to be compressed, not the full content. The Examiner has only presented a bare allegation that it would have been obvious to compress the sample to allow easier file transfer. Such an assertion amounts to Official Notice. Applicant disputes this

assertion in that compressing such a file does not necessarily make the file transfer easier. In fact, in some circumstances, e.g., if the file is "zipped" it can create additional steps that a user must take to play the sample (extraction of the compressed sample). Thus, the reasons set forth in the Office Action are inadequate to support a rejection based on Official Notice. The undersigned regrets that he must require the Examiner to submit art supporting this allegation or withdraw it under MPEP 2144.03. It is further submitted that a change in this rejection citing new art will necessitate removal of the finality of the current rejection in order to give the undersigned an opportunity to respond. Reconsideration and allowance is respectfully requested.

5. The Rejection of Claims 9, 11, and 28-31

Regarding claim 28, this claim has been cancelled to simplify the issues for appeal and its dependent claims made dependent from claim 9.

Regarding claims 9 and 11, the arguments of sections 2 and 3 above are applicable. Claim 9's features are similar to those of claim 1 except that they are more specific, for example, as to compression of the sample, the delivery of the purchased copy and the nature of the link. Accordingly the undersigned position is similar.

Regarding claim 11, although affinity credits of various sorts are described in kang, this reference teaches a specific mechanism of tracking the affinity credits (or payment). In Kang, a security code is set on the digital contents in order to track the payment. Since the current invention utilizes no such security code for transmission of samples, kang's technique is believed inapplicable to the present invention. Moreover, in the present embodiment, affinity credits are provided to a distributor of samples, not for distribution of the content. If Fritsch is combined with kang to distribute Fritsch's sample, one would have to use kang's security codes to track the distribution. However, kang's security codes are believed inapplicable except where the content itself is encrypted and distributed. If the samples are encrypted, Applicant's invention may be rendered cumbersome and ineffective. Any such combination is, thus, rendered illogical and there can therefore be no motivation in the art to make such a combination.

To highlight this distinction, the claims have been amended to preclude encryption, security codes and other restrictions on distribution. Accordingly, reconsideration and allowance is respectfully requested.

6. The Rejection of Claims 32-37

Regarding claims 32-35, Applicants respectfully request reconsideration. It is respectfully submitted that none of the cited references teaches or suggests a method for providing affinity credits to someone who distributes samples of content. It is noted that the nature of the samples has been clarified so there can be no mistake (even though this should have been the case all along with the term "sample" is read in light of the specification). The only relevant teachings of the cited references relate to providing affinity credits for actual distribution of the full content. In order to do so, the content is specially modified using the security codes described in paragraphs 29-31 in order to both track the distributor and disable the security verification on users that have paid for the content. The security verification is inapplicable to the claimed invention of claims 32 - 35 since the samples are distributed unencrypted. Clearly, failure to use such security verification defeats the function of kang and is improper in order to produce an obviousness rejection. Reconsideration and allowance of claims 32 - 35 is thus respectfully requested.

7. The Rejection of Claims 36-37

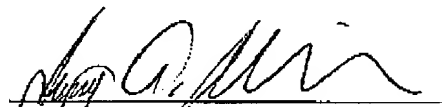
These claims clearly relate to an electronic commerce server for use in carrying out processes related to the method claims preceding them. Neither the current office action nor the prior office action provides any significant guidance as to the reasons for rejection of these claims. Applicant must presume that the reasons are similar to related method claims. Accordingly, all reasons stated above for reconsideration are applicable here. In addition, these claims have been amended in a manner similar to the method claims. Reconsideration and allowance is respectfully requested.

8. Request for Interview

The undersigned respectfully requests the courtesy of an interview. Although this application is under Final Rejection, it is believed that any outstanding issues can be resolved by such an interview. The undersigned be in Washington, D.C. on July 9, 2004 and can be at the patent office if this is a convenient time for the Examiner. Or, such interview can be conducted via telephone. The Examiner is requested to contact the undersigned to arrange such an interview.

In view of this communication, all claims are believed to be in condition for allowance and such is respectfully requested at an early date. If the examiner disagrees, it is respectfully requested that the amendments be entered to place this application in better condition for appeal.

Respectfully submitted,


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